A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

DB: Hon'ble Shri Justice S. R. Nayak, C.J.
& Hon'ble Shri Justice Satish K. Agnihotri, J.

Writ Petition No. 1541 of 2001

Petitioners

1. P. K. Surawadhaniwar
s/o Late Shri Shankar Rao
Surawdhaniwar
aged about 51 years,
Technical Assistant (PP)
Grade-I
Food Corporation of India,
RAJIM (C.G.)
2. K.Y. Gore
S/o Shri Y.N. Gore,
Aged about 51 years
Technical Assistant (PP) Grade I
Food Corporation of India,
Distt. Office,
BILASPUR (C.G.)
3. S.K. DIXIT
S/o Late S.L. Dixit,
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
District Office,
RAIPUR (C.G.)
4. S.K. BISWAS
S/0 Late Anil Kumar Biswas
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
BHATAPARA
RAIPUR (C.G.)
5. P.K. AGRAWAL
S/o Late Jagannath Prasad
Agrawal
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
DHAMTARI (C.G.)
6. S.K. SARAIYA
S/o Late Ganga Prasad Saraiya,
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
Baloda Bazar
RAIPUR (C.G.)
7. K.K. SHRIVASTAV
S/o Shri Dwarka Prasad,
Aged about 51 years,

Technical Assistant (PP) Grade I
Food Corporation of India,
Regional Office
RAIPUR (C.G.)

8. Q.G. AHMED
S/o Late Quazi Baduruddin Ahmed
Technical Assistant (PP) Grade I
Food Corporation of India,
DHAMTARI (C.G.)

9. M.M. AHMED
S/o Late M.V. Hussain
Technical Assistant (PP) Grade I
Food Corporation of India,
District Office,
DHAMTARI (C.G.)

10. D.D. SAMNANI
S/o Late M.D. Samnani
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
District Office,
DURG (C.G.)

11. S.C. OSWAL
S/o Late S.M. Oswal
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
District Office,
DURG(C.G.)

12. A.S. VISWANATHAN
S/o Late Sambamurthy,
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
Regional Office,
RAIPUR (C.G.)

13. K.B. BABU
S/o Shri Balaram Swaye
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
Regional Office,
RAIPUR (C.G.)

14. D.S. KUSHWAH
S/o Late P.S. Kushwah
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
DHAMTARI (C.G.)

15. P.S. THAKUR
S/o Shri Laxman Singh
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,

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District Office,
BILASPUR (C.G.)

16. G.S. SHARMA
S/o Late P.L. Sharma
Aged about 51 years,
Technical Assistant (PP) Grade I
Food Corporation of India,
District Office,
RAIPUR (C.G.)

Versus

Respondents

1. UNION OF INDIA
Through :- Secretary,
Govt. of India,
NEW DELHI.
2. FOOD CORPORATION OF INDIA
Through:- Managing Director
Food Corporation of India,
Head Office,
16/20 Barakhamba-Lane
NEW DELHI.
3. ZONAL MANAGER (West)
Food Corporation of India,
Ministry Bhawan
D.W. Road Curch Gate
MUMBAI (Maharashtra)
4. SENIOR REGIONAL MANAGER
REGIONAL OFFICE
Food Corporation of India
133-Sunder-Nagar
RAIPUR (Chhattisgarh)

Shri V. G. Tamaskar, Advocate for the petitioner.

Shri Bhishma Kinger, Standing Counsel for the respondent No. 1.

Shri B. P. Gupta, Advocate for the respondents No. 2 to 4.

ORAL O R D E R

(14th September, 2006)

The following oral order was passed by **S. R. Nayak, C.J.**

1. Although, the pleadings of the petitioners are as vague as it could be, what we gather after hearing Shri Tamaskar, learned counsel for the petitioners is the following :-

(i) The Food Corporation of India (FCI) has issued a Circular No. 22/1992 dated 28/30.12.92, marked as Annexure P/4, produced at page No. 30 of the material paper book. In this circular, a classification is made

for extending the selection grade scale. Only top most 30% of the employees in a cadre, who have put in 12 years or more of service in such cadre, have been chosen for extending the selection grade scale and remaining 70% of the employees in such cadre are left out for the benefit of the selection grade scale. According to Mr. Tamaskar, this provision in the circular tantamounts to an invidious discrimination and is violative of Article 14 postulates. In other words, according to Shri Tamaskar, all the employees in a cadre, who have completed 12 years of qualifying service should have been given the benefit of selection grade scale irrespective of length of service put in by individual employees in such cadre and/or relative seniority of employees in such cadre.

(ii) The next contention of Shri Tamaskar is that, as stated in para 5.3 of the writ petition, Shri P. N. Pandey and six others, whose details are set out in sub-paragraphs, thereof, are juniors to the petitioners, but, the respondents have given the benefit of selection grade to them, but, similar treatment is not meted out to the petitioners thereby violating equality clause of Article 14 of the Constitution.

2. These were the only two contentions urged before us by Shri Tamaskar, and no other point was urged before us for decision.

3. Before we proceed further it is appropriate to note down the reliefs sought in this writ petition. The following reliefs are sought by the petitioners :-

> "7.1 declare that restricting the selection grade/Time Scale grade, only to 30% of the employees in the cadre, with same period and qualification in Annex. P4, to be ultravires of the Constitution.
>
> 7.2 direct the respondents to extend the benefit of Time-Scale/Selection Post, to all those employees, in the cadre and pay-scale, who have completed Twelve-years and above, as per circular Annex.P4, by issuing a writ of Mandamus.
>
> 7.3 to issue a writ in the nature of Mandamus directing the respondents to create and publish promotional posts of Assistant Managers (P & P) Cadre and such other promotional posts as are available under the other cadres.
>
> 7.4 Circular No. 8 of 92 dt. 23/3/92 may also be struck down in the light of S.C. decision/observation.
>
> 7.5 to issue a writ in the nature of Mandamus directing the respondents to order/release, promotions to the posts of Assistant Managers (P & P), from the employees working in P & P Cadre after setting aside the circular No. 8 of 1992 dated 23/3/92, so far as it relates to procedure for promotions.
>
> 7.6 to issue yet another writ of Mandamus, directing the respondents to grant promotional benefits within the seniority of P & P Cadre as per the guide lines of circular dated 19/6/1992."

4. The impugned circular dated 28/30.12.92 (Annexure P/4) reads as under :-

> "भारतीय खाद्य निगम
> 6–20, बाराखम्बा लेन
> मुख्यालय, नई दिल्ली–1
>
> सं.वे.सं.क/3/1/1992. दिनांक : 28/30.12.92.
>
> परिपत्र संख्या 22/1992

विषय :– निगम के श्रेणी तीन और चार के कर्मचारियों के लिए दिनांक 1.12.87 से सलेक्शन ग्रेड लागू करना–तत्संबंधी निर्देश ।

संदर्भ :– परिपत्र संख्या 20/1992 की पैरा – 8.

निगम के श्रेणी तीन और चार के कर्मचारियों के लिए संबंधित ग्रेड/वेतनमान के अवरूद्व हो जाने के कारण उनके लिए पैदा होने वाली कठिनाई के कम करने के उद्देश्य से भारत सरकार के अनुमोदन से दिनांक 1.12.1987 से सलेक्शन ग्रेड आरंभ करने का निर्णय लिया गया है । इस संदर्भ में श्रेणी तीन और चार के समस्त वेतनमानों के समकक्ष ग्रेड वेतनमान निम्न प्रकार होंगे :–

दिनांक 1.8.1987 से लागू औ.मे.भत्ते के सामान्य वेतनमान (रूपये)	दिनांक 1.12.1987 से प्रभावी औ.मं. भत्ता के सलैक्शन ग्रेड (रूपये)
1230-35-1440-45-1755 (12 वर्ष)	1265-35-1440-45-1845 (14 वर्ष)
1265-35-1440-45-1845 (14 वर्ष)	1370-35-1440-45-1800-50-1950(13वर्ष)
1370-35-1440-45-1800-50-1950(13वर्ष)	1440-45-1710-50-1860-55-2080(13वर्ष)
1440-45-1710-50-1860-55-2080(13वर्ष)	1440-50-1650-60-2190 (13 वर्ष)
1450-50-1650-60-2190 (13 वर्ष)	1650-60-2130-75-2655 (15 वर्ष)
1650-60-2130-75-2655 (13 वर्ष)	1825-65-2150-80-2630-1100-3430 (19 वर्ष)
1825-65-2150-80-2630-1100-3430 (19वर्ष)	2390-80-2550-110-3760 (13 वर्ष)

2. श्रेणी तीन के कर्मचारियों के लिए सलैकशन ग्रेड संबंधित आंचलिक प्राधिकारियों द्वारा तथा श्रेणी चार के कर्मचारियों के लिए क्षेत्रीय प्राधिकारियों द्वारा संचालित किया जाएगा । यह प्रत्येक ग्रेड/संवर्ग में स्वीकृत पदो के निर्धारण के अधीन होगा । सलैक्शन ग्रेड में नियोजित करने की पात्रता, सलैक्शन ग्रेड पद पर नियुक्ति तथा सलैक्शन ग्रेड में नियुक्ति होने पर वेतन निर्धारित करने की प्रकिया निम्नानुसार होगी :–

(1) <u>सलैक्शन ग्रेड पदों का निर्धारण :–</u>

अगले आदेशों तक संबंधित ग्रेड/संवर्ग/श्रेणी के लिए 1.12.87 की प्रत्येक ग्रेड/संवर्ग/श्रेणी में स्वीकृत पदो के 30 प्रतिशत पदो को सलैक्शन ग्रेड पद के रूप में निर्धारित किया जाएगा । दूसरे शब्दों में प्रत्येक ग्रेड/संवर्ग/श्रेणी में दिनांक 1.12.87 को स्वीकृत संख्या के आधार पर सलैक्शन ग्रेड के रूप में घोषित पदों की संख्या अगले आदेशों तक पूर्ववर्ती वर्षों में प्रभावी होगी । सक्षम प्राधिकारी सलैक्शन ग्रेड पदों में प्रत्येक वर्ष में 1 दिसम्बर से अर्थात 1988, 1989, 1990 के लिए तथा जब तक कि इस योजना की पुनरीक्षा नहीं की जाती, पदोन्नति अथवा अन्यथा के परिणामस्वरूप सलैक्शन ग्रेड पदों को निर्धारित करने/भरने की व्यवस्था करेंगे । सामान्य पदोन्नति की यूनिट ही सलैक्शन ग्रेड पदों की संख्या की गणना की युनिट होगी ।

(2) <u>सलैक्शन ग्रेड पदों पर स्थापन के लिए पात्रता :–</u>

श्रेणी तीन और चार के वे सभी कर्मचारी, जिन्होंने दिनांक 1.12.87 को अथवा उसके बाद उसी श्रेणी संवर्ग में कम से कम 12 वर्ष की सेवा की हो, उन्हें सलेक्शन ग्रेड के लिए पात्र माना जाएगा।

(3) <u>सलैक्शन ग्रेडों में स्थापन की प्रकिया :–</u>

(क) श्रेणी तीन के कर्मचारियों के मामले में आंचलिक पदोन्नति समिति तथा श्रेणी चार के मामले में क्षेत्रीय पदोन्नति समिति द्वारा अनुन्युक्त कर्मचारियों की अस्वीकृति के अधीन वरिष्ठता के आधार पर सलैक्शन ग्रेड में स्थापन किया जाएगा। सलैक्शन ग्रेड के लिए श्रेणी चार के पदों पर विचार करने के लिए मुख्यालय और आंचलिक कार्यालयों को अलग–अलग इकाईयां माना जाएगा।

(ख) सलैक्शन ग्रेड में स्थापन करते समय सभी सक्षम प्राधिकारी अनुसुचित जातियों और जनजातियों की पदोन्नति से संबधित प्रत्याशियों की पदोन्नति के लिए भारत सरकार द्वारा समय–समय पर जारी आदेशों का अनुसरण करेंगे।

(ग) पूर्वी अंचल में श्रेणी तीन के कर्मचारियों के लिए सलैक्शन ग्रेड पदो के संबंध में यह आधार होगा – (1) दिनांक 1.12.87 को सम्मिलित स्वीकृत पद और (2) पूर्वी तथा उपूसी अंचल की संयुक्त आंचलिक पदोन्नति समिति द्वारा सलैक्शन ग्रेड में स्थापन के लिए विचार करने की तिथियों में संगत पदोन्नति सूचियों के आधार पर ये पदोन्नति सूचियां आपसी सहमति के आधार पर बनाई जाएंगी । दिनांक 1.4.89 को पूर्वी अंचल को अपूसी अंचल और पूर्वी अंचल में विभाजित किया गया था तथा परवर्ती रिक्तियों के परिणामस्परूप कर्मचारियों की सलैक्शन ग्रेड में स्थपन करने के लिए विचार करने के वास्ते अगली तिथि 1.12.89 होगी । संयुक्त पूर्वी संख्या के दोनों अंचलों में 1987 की संख्या के अनुसार निर्धारित सलैक्शन ग्रेड पदों की कुल संख्या में कोई परिवर्तन किए बिना 1.12.89 को दोनों अचलों की स्वीकृत संख्या के अनुपात मे विभाजित कर दिया जाएगा । प्रत्येक अंचल की पदोन्नति समिति अपने संबंधित अंचलों में दिनांक 1.12.89 को सलैक्शन ग्रेड में स्थापन के लिए कर्मचारियों के संबंध में निर्णय करेंगी ।

(4) <u>सलैक्शन ग्रेड में स्थापन होने पर वेतन का निर्धारण :–</u>

(क) औद्योगिक मंहगाई भत्ता प्रणाली के अंतर्गत श्रेणी तीन और चार के कर्मचारियों का वेतन सलैक्शन ग्रेड में स्थापन होने पर सामान्य वेतनमान में सैद्धांतिक वेतन वृद्धि की अनुमति के साथ सलेक्शन ग्रेड वेतनमान में अगले उच्चतर चरण में निर्धारित किया जाएगा ।

(ख) केन्द्रीय मंहगाई भत्ते के अंतर्गत श्रेणी तीन और चार के कर्मचारियों को उपरोक्त सभी अन्य शर्तों की पूरन करने की शर्त के अधीन उपरोक्त सलैक्शन ग्रेड वेतनमान का प्रस्ताव किया जाएगा और यदि वे प्रस्ताव स्वीकार कर लेते हैं तो उनका वेतन पहले दिनांक 29.3.89 के परिपत्र सं.2/1989 के अनुसार दिनांक 1.8.83 से तथा दिनांक 9.11.92 के परिपत्र सं. 20/1992 के अनुसार 1.8.87 से औद्योगिक मंहगाई भत्ता प्रणाली के वेतनमानों में सैद्धांतिक रूप से निर्धारित किया जाएगा तथा इसके बाद उपरोक्त (4) (क) के अनुसार सलैक्शन ग्रेड में निर्धारित किया जाएगा । इन कर्मचारियों के मामले में इनके द्वारा केन्द्रीय महंगाई भत्ता प्रणाली के अंतर्गत दिनांक 1.8.83 से औ. मं. भत्ता प्रणाली के अंतर्गत सलैक्शन ग्रेड वेतनमान में उनके स्थापन तक की अवधि के दौरान आरक्षित वेतन मजदूरी को अंतिम माना जाएगा ।

(ग) तथापि एक विशेष मामले के रूप में दिनांक 1.12.87 और 30.4.89 के बीच सलैक्शन ग्रेड में स्थापन किए गए कर्मचारियों को यदि वे इसके लिए विकल्प देते हैं तो उस सामान्य तिथि की बजाए 1.5.1989 से सलैक्शन ग्रेड के लिए विकल्प देने की अनुमति होगी । जिस मामले में उपरोक्त (4) (क) के अनुसार 1.5.1989 को सलैक्शन ग्रेड में निर्धारित किया जाएगा ।

3. सभी सक्षम प्राधिकारियों से अनुरोध है कि वे श्रेणी तीन और चार के मौजूदा पात्र कर्मचारियों को सलैक्शन ग्रेड वेतनमानों में स्थापन करें । उपरोक्त पैरा 2 के अंतर्गत दिए गए अनुदेशों का पालन करें तथा 1.12.1987 को स्वीकृत कुल संख्या, संबंधित सलैक्शन ग्रेड में स्थापन किए पात्र कर्मचारियों की संख्या, उन पात्र कर्मचारियों की संख्या जिन्हें 1992 तक सलैक्शन ग्रेड के वेतनमानों में स्थापन नहीं किया जा सका, अप्रैल 1993 तक अधोहस्ताक्षरी को भेज दें ताकि इस योजना की समीक्षा की जा सके जैसा कि राष्ट्रीय समन्वय समिति के साथ सहमति हुई है ।

4. यह प्रबन्ध निर्देशक के अनुमोदन से जारी किया जाता है ।

सही/–

(एन.सी.गौतम)

संयुक्त प्रबंधक (ई.पी.)

वितरण :– अंग्रेजी परिपत्र के अनुसार

महत्वपूर्ण टिप्पणी :–

यह 1992 के परिपत्र संख्या 22, दिनांक 28/30.12.92 के अग्रेजी मूलपाठ का हिन्दी अनुवार है किसी भी विवाद की दशा में मूलपाठ ही अंतिम रूप से मान्य होगा । "

5. We are of the considered opinion that no ground is made out to quash the impugned circular dated 28/30.12.1992. It is true that the selection grade scale in terms of the impugned circular is granted only to senior most 30% of employees in a cadre who have all completed 12 years of qualifying service. In other words, the F.C.I. has made a classification of employees in a cadre into two groups, the first group consisting of 30% of the senior most employees and the other group consisting 70% of the left out junior employees in such cadre. The question for consideration is whether this classification made by the F.C.I. which is a "State" within the meaning of Article 12 of the Constitution of India could be

condemned as invalid on any permissible ground. It is true that since the guarantee of equal protection embraces the entire realm of 'State action', it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him but also in the matter of granting privileges, benefits etc. However, it is equally well-settled that the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. It is well settled that the executive government is not under an obligation to extend benefits, pecuniary or otherwise, to all persons falling within a very broad group; within such broad group also, it is permissible for the State to make a reasonable classification of the members constituting of such group. If the State takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a "*well-defined class*", it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. What is necessary is that there must be a *nexus* between the basis of classification and the object of the law under consideration. Article 14 does not insist or command that classification should be 'scientifically perfect or logically complete'. It is very important to note that when a law is challenged as denying equal protection, the question for decision is not whether it has resulted in inequality, but whether there is some difference between covered and left-out groups which bears a just and reasonable relation to the object of legislation. Mere

differentiation or inequality of treatment or inequality of burden does not *per se* amount to discrimination within the inhibition of the equal protection clause of Article 14. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it cannot be sustained on any rational basis. Only if left out 70% of employees and covered 30% of employees in a cadre could be regarded as persons belonging to a "*well defined class*", then only it would attract the wrath of Article 14 and not otherwise. It cannot be said that the classification made by the State is not based on an intelligible differential. The F.C.I., it appears to our mind, taking into account financial burden and other relevant considerations has chosen to extend the benefit of the circular (Annexure P/4) only to 30% of senior most employees in a cadre and not to all employees in such cadre who have put in qualifying service of 12 years. In that view of the matter, we do not find any substance in the first contention of Shri Tamaskar, learned counsel for the petitioner. Therefore, we uphold the constitutionality of the impugned circular (Annexure P/4) dated 28/30.12.1992.

6. This takes us to the second contention of Shri Tamaskar. At the outset, it needs to be noticed that the service particulars given by the petitioners in para 5.3 with regard to Shri P. N. Pandey and six others are as vague as they could be, and from these facts we have no reason to hold that the petitioners are seniors in the same cadre to which Shri P. N. Pandey and six others belong. Furthermore, it needs to be noticed that the particulars given in para 5.2, if we may say so, are misleading. It was submitted at the Bar by learned standing counsel appearing for the F.C.I. that the petitioners after

making entry into the service of the Corporation in the year 1971, 1972 and 1973, earned two promotions. It was said that the petitioners were initially appointed as Assistant Grade-III ministerial cadre being science graduates and thereafter they were promoted to the higher post of Assistant Grade-II and Assistant Grade-I.

7. In para 6.2 of the return filed by the respondents No. 2 to 4 it is mentioned that the petitioners were appointed in the services of the Food Corporation of India, not in the services of the Government of India; hence, their contention made in para 5.2 regarding entry in Government of India service is incorrect. It is further mentioned that the contents of para 5.3 of the petition are also totally false. It is specifically stated that the persons named in that paragraph are not juniors to the petitioners. It is also stated that the petitioners and the persons named in that paragraph are belonging to different cadres. These facts are not disputed by Shri Tamaskar before us. It is also not clear from the pleadings of the petitioners when the selection grade was granted to Shri P.N. Pandey and others. If it is granted, it should have been granted under certain office orders. Such orders are not challenged before us.

8. Be that as it may, there is no necessity for us to dilate on it. The claim of the petitioners to selection grade pay scale is entirely based on the impugned circular. The crux of the matter is whether the petitioners who do not come under the zone of 30% of the senior most employees in the cadre concerned are entitled to claim, as a matter of right, that they should also be granted the benefit of

the selection grade pay scale on par with 30% of senior most employees in their cadre simply because they have also put in 12 years of service in the said cadre irrespective of length of service they have put in. This question does not detain the Court for long.

9. We have already stated above that the classification made by the F.C.I. is a reasonable classification. It can be sustained on the touchstone of Article 14 of the Constitution. It cannot be said that the 30% of the employees chosen for the treatment and the left out 70% of the employees in the cadre concerned should be regarded as persons belong to a *"well defined class"* for the purpose of Article 14 of the Constitution. Secondly, even assuming that some employees, similarly circumstanced with the petitioners have been granted selection grade erroneously and illegally by the administration of the F.C.I., that circumstance itself without anything further would not be a justification for this Court to grant relief to the petitioners also. It is well settled that under no circumstance, a writ of mandamus can be issued to Government or a public authority to do anything in breach of public law obligation. The F.C.I. is bound by its policy decision contained in the impugned circular. Since we have upheld the validity of the impugned circular, issuing writ of mandamus would not arise.

10. In the result and for the foregoing reasons, this petition is dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Thakur